

**Testimony of
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**Before the House Subcommittee on Conservation, Credit, Rural Development and
Research
Committee on Agriculture, U.S. House of Representatives**

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Chairman Lucas, Ranking Minority Member Holden, and Members of the Committee:

I am pleased to appear on behalf of the Crop Protection Coalition (CPC) and Florida Fruit & Vegetable Association (FFVA) to discuss the issues surrounding the Critical Use Exemption process for the important crop production tool methyl bromide. The membership of the Crop Protection Coalition comprises food and agricultural industries, including nurseries and horticultural industries, which rely on methyl bromide to produce, store, handle or ship foods or other agricultural products. Florida Fruit & Vegetable Association is a voluntary trade association that represents fresh fruit and vegetable producers in the state of Florida. Both of these organizations have assumed a direct role in tracking the complex and often difficult to comprehend regulatory developments associated with methyl bromide and the critical use exemption process. As several of my co-panel members are also members of the Crop Protection Coalition, I will focus my testimony on the experience of Florida Fruit & Vegetable Association in developing the critical use petitions for tomatoes, strawberries, eggplants, and peppers in Florida, and their subsequent review, both at the national level and through the international process employed by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer.

The critical use exemption process is only one of the many facets of the complex interactions surrounding methyl bromide that have resulted from changing science, international review and decisions regarding an international treaty, and the interplay between two federal laws, the U.S. Clean Air Act and the Federal Insecticide, Fungicide and Rodenticide Act. As an observer representing directly impacted parties, I have watched with interest as the negotiations took place to establish the critical use exemption process specifically for methyl bromide through an amendment to the Montreal Protocol, and development of the regulatory framework necessary for the US Government to be able to respond to identified and scientifically justified needs in the international arena.

The international criteria, as described in Decision IX/6 by the Parties to the Montreal Protocol to implement the exemption process, while not prescriptive clearly defined the decision to be based on specific conditions. That decision requires a decision that: “... *no technically and economically feasible alternatives that are acceptable from the*

standpoint of environment and health and are suitable to the crops and circumstances of the nomination” prior to allowing a critical use exemption.

In order to collect the information necessary to meet these criteria the Environmental Protection Agency’s Office of Air and Radiation developed, through a public process, the information to be collected and submitted to document the quantity of methyl bromide and sites of use that would qualify for critical use exemption. FFVA participated in the public process and while not totally satisfied with the final format and information requested, we felt that the information as required by the subsequent Federal Register Notices on Application for Critical Use Exemptions of Methyl Bromide (**67 FR 31798**, **68 FR 24737**, **69 FR 25570**), if judged fairly, would provide adequate information for both the national and international review.

To fully appreciate the efforts required and difficulty in determining the appropriate information to be supplied, each year’s subsequent effort needs to be described:

2002 Critical Use Exemption Application Cycle:

The Federal Register Notice announcing the initial data collection effort was published in May of 2002 with a 120-day data collection and petition preparation period. The application was to cover the phase out of methyl bromide scheduled to begin on January 1, 2005. The forms associated with the application process allowed for a multiple year request (specifically asking for 2005, 2006 and 2007 acreages and quantities). The alternatives addressed were to come from the “official” list of potential alternatives described at the international level and further refined to reflect those products with registration in the United States. FFVA served as the petitioning agent for producers of tomatoes, strawberries, peppers and eggplant grown on plastic mulch that are marketed by handlers in the state of Florida. The information collection included the review of sponsored research specifically done to address the unique soil types and cropping patterns associated with these crops in Florida. These three petitions (eggplant and peppers were combined into a single petition) are archived in EPA’s docket associated with this exemption process (OAR-2003-0017). FFVA staff required over 800 man-hours with an additional effort from the research community and growers of approximately 3,000 hrs to compile the information submitted in support of these three petitions. This initial effort was complicated by the lack of clear guidance from the international community as to the format and information to be included in the national Critical Use Nomination.

Florida Fruit and Vegetable Association had served as the coordination point in Florida for much of the research initiated in the early 1990’s with the listing of methyl bromide as a regulated substance under the Montreal Protocol. Pre-plant fumigation is the foundation of the crop production utilizing plastic mulch culture. This practice was introduced in Florida in the early 1960’s and within three years had been adopted by the majority of producers of vegetables on the sandy flatwoods soils of Florida. The introduction of methyl bromide as a pre-plant treatment shortly after the initial introduction of plastic mulch increased yields by a factor of three. While other

nematicides and soil fumigants have been registered during the ensuing years the pre-plant treatment of choice has remained methyl bromide. The broad spectrum of control of multiple pests and the development of application techniques that allowed for in-bed fumigation contribute to the continued reliance on methyl bromide as the best choice for pre-plant soil fumigation under Florida conditions. The cooperative research program in Florida identified a next best alternative to methyl bromide that depends on multiple applications of a mixture of pesticides to deal with the spectrum of pests controlled by the single application of methyl bromide. During this period cultural practices and other means to reduce the use rate of methyl bromide were examined. These efforts suffered a set back after the first CUE petition had been filed as a result of the cancellation of the primary herbicide we had identified to be used to help suppress Purple and Yellow Nutsedge, the primary problematic weed species.

The more elusive information required in the petition process concerned the economic impacts of adoption of the alternatives at the individual farm level as required to determine the “economic feasibility” of adoption of near equivalent technically feasible alternatives. This was further complicated in Florida by the seasonality of production and the typical accounting periods utilized by growers in the state. Records are maintained for production seasons split across calendar years into a fall/winter/spring continuous cropping season. To provide the information as required on the OMB approved application forms a significant effort to reformat historical information into the required periodicity for completion was required. The practice of utilizing the same plastic mulch across multiple crops during a single production season also complicated the economic information data collection. This particular production practice is most common during the long growing seasons encountered in Florida. Most of the information collected at the national level on the impact of the regulatory phase out of methyl bromide prior to the CUE process was focused on the impact across the regional production industry and not on the individual farm enterprise unit.

After careful review of the above issues the resulting petitions submitted by FFVA requested critical use exemptions for the total production acreage of all four crops included in the petitions we submitted. The use rate requested was much lower than the maximum use rate allowed on the current labels for methyl bromide in the subject crops. The rate requested represented the minimum rate necessary under current cultural practices to achieve nutsedge control. The submission from FFVA to document the information requested was over 5,000 pages across the three petitions submitted. This information was submitted in September of 2002. This initiated the internal U. S. review for compilation of a National Critical Use Nomination to be submitted to the Ozone Secretariat of the United Nations Environmental Programme, the administrative oversight body for the Montreal Protocol, by the end of January 2003. The UNEP review was to occur with a recommendation to the Parties for Approval at the 15th Meeting of the Parties to the Montreal Protocol in November of 2003.

While there were numerous contacts between the review teams for the individual petitions at the national level, the final decisions and sector allocations submitted for international review were not discussed formally prior to submission. The internal

review and decision process for the amounts to be requested resulted in significant reductions in the specific quantities identified for the four Florida crops (30% reduction for tomatoes, 40% reduction for Strawberries, and 50% reductions for eggplant and peppers). FFVA requested and received a briefing by the Office of Pesticides Programs in cooperation with the State Department and the U. S. Department of Agriculture in March of 2003 to discuss our concerns and to offer our assistance in preparing any supplemental information that may be required as the international review took place. The U.S. CUN had consolidated the multiple individual petitions into sectors and further reduced the amount of information submitted to the international community for review. The U. S. Nomination had further consolidated the request into a single lump sum request for CUE approval at the international level.

While we did not totally agree with the treatment of the crops and quantities we had requested FFVA was generally supportive of the efforts of the Agencies as the nomination moved through the international review process. We were satisfied that the difference between the petitioned amount and the requested CUE quantities could be mitigated by the availability of methyl bromide manufactured prior to the January 1, 2005 phase out date. We were also comfortable that the U. S. Nomination fulfilled all of the requirements imposed by the Montreal Protocol and should move through the international review process as the standard by which other national nominations would be judged.

The international review process was extremely frustrating for those of us who had submitted petitions to the U. S. government. The international Technical Committees established by the UNEP Ozone Secretariat charged with review of National Critical Use Nominations, the Methyl Bromide Technical Options Committee (MBTOC) and the Technology and Economic Assessment Panel (TEAP), began their review in early April 2003 with the goal of providing recommendations to the Parties at the Open Ended Working Group of the Parties (OEWG) in July 2003. This process ran into complications almost immediately with most of the sectors identified in the U.S. Nomination being classified as unable to assess. This was attributed to the need for additional information to document the circumstances of the nominations for the specific crops and sites for which CUEs were nominated. This was even further complicated by the operating rules of the review committees and the lack of transparency in the international review process. The first chance many of the petitioners had to discuss their petitions with the leadership and representatives of MBTOC was through informal consultations in the hallways at the OEWG. This tremendous confusion and lack of consensus at the OEWG led to another meeting of MBTOC in September of 2003 with a recommendation mandated for consideration at the 15th Meeting of the Parties in Nairobi, Kenya. The revised recommendations were circulated in October of 2003 with many of the sectors still in a state of indecision. Much of the discussions at the 15th Meeting of the Parties centered on the Critical Use Nominations and in particular the perception by the European Community and many of the Article 5 nations that the U. S. Nomination was exceedingly large and needed to be reduced. The U.S. delegation at that meeting did an excellent job in support of the national request and as a result the First Extraordinary Meeting of the Parties was set for Montreal in March of 2004. MBTOC was directed to meet in January

2004 to resolve the outstanding issues and to come forward with specific recommendations for those categories that they had been unable to assess in previous reviews. The MBTOC supplemental report was issued on 14 February, 2004. The U. S. received recommendations for approval on all but a small portion of the initial amounts requested. While the decision was favorable the amounts of methyl bromide approved for production and consumption were limited and the remaining CUE approved methyl bromide in the United States were to be drawn from existing supplies. The Parties also adopted several decisions that impact future cycles of Critical Use Nominations. The Critical Use Nomination Handbook was revised with recommended forms for National Submissions and debate continued over the appropriate way to evaluate the economic feasibility of alternatives and the information necessary to document “*the circumstances of the crop and site of use*” as required in Decision IX/6.

2003 Critical Use Exemption Application Cycle:

The Federal Register Notice announcing the second round of applications for CUEs was published on May 8, 2003 with a 90-day period for data collection and submission. This application notice was based on the previous interpretation of the requirements under the international criteria. The 2002 international review period was in progress and the subsequent decisions of the parties governing CUN criteria and information needs had not been taken. The 2003 round of applications requested any supplemental information for 2005 CUEs and quantities requested for the 2006 and 2007 control periods. In Florida, FFVA consolidated its petition into a single submission covering the crops included in the three petitions submitted in 2002. While much of the petition was devoted to addressing the reductions taken by the U. S. from a regulatory perspective, the “best available alternative” identified for economic analysis purposes was changed to reflect the loss of the registration of Pebulate, the herbicide of choice. Additionally, in an effort to more accurately reflect the enterprise budgets for methyl bromide and proposed alternatives, a series of direct meeting with individual growers were held to update the enterprise budget information previously submitted. The petition and supporting information specific to the nomination are archive in the EPAs Docket (OAR-2003-0017). The information archive represents a portion of the petition submitted by FFVA with 431 of over 1800 pages included. The research reports that accompanied the petition were not docketed.

In an attempt to address concerns that had been raised during the international review, a session on the CUE process was held as part of the International Research Conference on Methyl Bromide Alternatives and Emissions Reduction in San Diego, November 2003. The U. S. review of petitions was completed in January with submission of the 2003 CUN to UNEP in February 2004. The second round of CUN’s had to be delivered to UNEP prior to completion of the review and decisions on the initial 2005 petitions.

In regard to the specific crops included in the CUN based on FFVA’s CUE petitions, FFVA was concerned that even though information was provided to document the need for additional methyl bromide based on the review criteria used in the 2002 round, the U. S. Nomination included a reduced amount for the crops than was included in the previous

petition. FFVA was consulted in the period prior to submission of the 2003 Nomination and addressed the specific issues raised in the review. However, the quantities proposed were not increased.

This problem was further exacerbated as a result of the lack of direct input into the international review process. MBTOC was engaged in the additional review of the 2002 recommendations when the U.S. Nomination was being finalized and was able to meet with and tour the California production area. We requested the same courtesy from UNEP and MBTOC for the crops included in the Nomination on the east coast but this direct meeting has still not been held.

The initial review of MBTOC as published in its preliminary report to the Parties in June of 2004 raised additional issues associated with their review of the US Nomination and potential reductions in CUE quantities based on criteria that had not been discussed or decisions taken by the Parties. Most troubling in this respect was a total disregard for the regulatory processes in individual countries and the assumption that newly registered products or changes to existing registrations translated into expedited and immediate adoption at the field level. Several of the specific quantities of requested methyl bromide were proposed for reduction by MBTOC because technically feasible alternatives could be adopted. This was done based on individual members of MBTOC experiences in their countries that in many cases operate under different market forces and levels of input costs.

Additionally as part of the controversy that arose over the 2002 round of CUN's the operating parameters of MBTOC and the criteria associated with that review are in the process of being revised. While the reconstituted MBTOC will not be in place until the 2005 or 2006 review period, the Parties were directed to take the decisions of the Extraordinary Meeting of the Parties into consideration with the 2003 round of CUN's. The initial reviews as published in the TEAP report to the Parties for consideration at the 15th meeting of the Parties included significant cuts to the U.S. Nominations as a result of these criteria. The 15th meeting of the Parties considered the CUN recommendation and approved approximately 2 percent of additional CUEs for the U.S. in 2005, but did not include additional consumption or production for the 2005 control period. Action on the 2006 control period included approval of consumption and production at 29 percent of the 1991 baseline with another Extraordinary Meeting of the Parties scheduled for July 1, 2005 to consider approval of additional quantities. The U. S. government submitted detailed comments on January 31, 2005 support of the disputed quantities.

2004 Critical Use Exemption Application Cycle:

The Federal Register Notice announcing the 2004 application process for methyl bromide CUE's was published on May 7, 2004 (69 FR 25570) with a 90-day data collection and preparation period. Again FFVA submitted a petition covering the four crops included with its original CUE request. FFVA's 2004 petition reflected changes in acreage for peppers and tomatoes in the 2007 CUE request. Labeling changes related to worker protective equipment for applicators and early reentry for workers on 1,3-

dichloropropene allowed us to return to the in-bed application of this product in the complex of alternatives required to achieve the “best available” alternative to methyl bromide. And even though several post emergent herbicide have been registered for use on purple and yellow nutsedge, application and plant back restrictions limit the utility of these products as a replacement for the pre-emergent applied pebulate. The changes in identified alternatives and shifts in primary pests in strawberry required significant additional information for this round of applications. FFVA’s core application is found in the EPA Docket associated with this exemption process (OAR-2003-0017). The Docket contains the application and supporting document, bibliography of research and supporting economic information (1,018 pages). Copies of the supporting research documentation was not included in the Docket (800 pages).

Concerns of FFVA for this round of nominations remain the same as with the previous submission in 2003. Additional information to document the continued need and current status of efficacy trials of alternatives was included. In the opinion of the research and grower community, while we continue to improve the performance of the best available alternatives, we are not significantly advanced from where we were in 2002 and 2003.

FFVA is seriously concerned over the U. S. Critical Use Nomination as forwarded to UNEP on January 31, 2005. The sectors that include the four crops for which we submitted petitions are proposed for significant reductions in CUE quantities in 2007. We are facing reductions from the quantities requested by Florida of over 50 percent in some cases. In conversations with the U. S. reviewers as they finalized their analysis prior to submission of the petition to UNEP, reductions of this magnitude were not discussed.

As a result of the reductions proposed by the U. S. Nomination we are anticipating significant, and, in our opinion, non-justified reductions at the international level for the crops we represent.

Overall Process Issues

Florida Fruit & Vegetable Association continues to have serious concerns over the process involved with the Critical Use Exemption process. While the international review continues to be the most frustrating, there are concerns over the domestic process as well.

In the scope and magnitude of issues facing the United States and other in the international community methyl bromide does not reach the level of BSE or Soybean Rust, but as the cornerstone of production for our membership it is critically important. We will continue to be engaged in the process at all levels to ensure the needs and concerns of our membership are addressed.

At the international level, we would encourage continued high priority of this issue within the context of the Montreal Protocol. The U. S. State Department is to be commended for the position taken to ensure that criteria adopted by the Parties be consistently applied and scientifically reviewed. The international process needs to be

opened up both during review, recommendation and decision formulation stages of the complex process. As outside observers and only having access to the published documents at the international level there appears to be a lack of consistency in the review process, with the U. S. being held to a much higher standard of data and justification of need as decisions are rendered. The composition and operating procedures of the Technical Review Committees of UNEP need to be fully open and transparent. The Ozone Secretariat should be held accountable to the standards the regulated community is subjected to in this country as the regulatory process is carried out. This would minimize the appearance of political considerations in the decision process.

At the domestic level, the overall process is somewhat limited by the time constraints and the decision points dictated by the international process. It is our opinion that the process of review that leads to the U. S. Nomination needs to be more open and transparent with actions taken by the government to reduce requested quantities fully documented and discussed with the petitioners prior to finalization for submission to the international level.

Conclusion

FFVA appreciates the attention given to this issue by this committee as evidenced by the hearing today. We stand ready to work with you to see that the information and support needed to continue to address this issue are available.